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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DIVISION OF CALIFORNIA
10 SAN JOSE DIVISION
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14 NOEMIA CARVALHO, et al.,

Case No. C 08-1317 JF (HRL)

15 Plaintiff,

DECLARATION OF EVAN HENDRICKS
IN SUPPORT OF MOTION TO CERTIFY
CLASS ACTION

16 vs.
17

18 CREDIT CONSULTING SERVICES, INC.
19 dba CCS, et al.,

20 Defendants.

DATE:
TIME:
DEPT.:

21
22 _____/
23 I, Evan D. Hendricks, declare as follows:

24 1. I have been requested to consult as an expert in this matter, generally, on the issues of the
25 reinvestigation policies and processes of the big three consumer credit reporting agencies,
26 Experian Information Solutions, Inc. ("Experian"), Equifax Credit Information Services, Inc,
Equifax, Inc. ("Equifax") and Trans Union, LLC ("TU"), collectively referred to as the credit
reporting agencies or the CRAs.

1 2. I am an expert in the area of credit reporting. My professional experience in this area is as
2 follows.

3 3. Since 1981, I have been Editor/Publisher of Privacy Times, a biweekly, Washington-based
4 newsletter that reports on privacy and information law, including the Fair Credit Reporting Act
5 (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched,
6 written, edited and published many articles on Congressional and State legislative actions,
7 judicial opinions, industry trends and actions, executive branch policies and consumer news as
8 they relate to the Fair Credit Reporting Act.

9 4. From 1992 to the present, I have been qualified by the federal courts in the Fair Credit
10 Reporting Act (FCRA) and identity theft cases, see below. The FCRA is the federal statutory
11 equivalent of the California Consumer Credit Reporting Agencies Act (CCRAA). Most of the
12 provisions of the FCRA are the same as the CCRAA.

13 5. I have read extensive deposition testimony by credit bureau and credit grantor personnel for
14 each of the CRAs. This is significant because consumer reporting agencies and credit grantors do
15 not openly discuss or publish information on their procedures and practices for handling personal
16 data, and the best (and possibly only) sources for finding candid descriptions of CRAs' and credit
17 grantors' procedures and practices in relation to credit reporting data are the depositions of CRA
18 and credit grantor employees in credit reporting litigation.

19 6. From 1998 to the present, I have been a Privacy Expert Consultant for the U.S. Social Security
20 Administration, regularly reviewing policies and practices in relation to the collection, use and
21 disclosure of personal data and Social Security numbers and provide feedback and
22 recommendations.

23 7. From 2002 to 2004, I was a member of the, Experian Consumer Advisory Council, providing
24 an outsider's view on credit reporting, marketing and other privacy issues.

25 8. From July to October 2002, I acted as a Consultant to U.S. Postal Service, working with the
26 USPS's Chief Privacy Officer in reviewing and editing the re-write of the USPS's Privacy Act
notices, with an emphasis on "Plain English."

9. I have testified before the Congress and the Federal Trade Commission on privacy issues as follows:

“Credit Reports: Consumers’ Ability to Dispute and Change Information,” House Financial Services Committee, June 19, 2007.

“Privacy in the Commercial World II,” House Energy & Commerce Subcommittee On Commerce, Trade, and Consumer Protection, June 20, 2006, link:

<http://energycommerce.house.gov/108/Hearings/06202006hearing1938/Hendricks.pdf>;

“Financial Data Protection Act of 2005,” House Financial Services Subcommittee on Financial Institutions and Consumer Credit, November 9, 2005; link:

<http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=425>;

“Credit Card Data Processing: How Secure Is It?” House Financial Services Subcommittee on Oversight and Investigations, July 21, 2005, link:

<http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=407>;

“Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information,” Senate Banking Committee, March 15, 2005, link:

<http://banking.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=144>;

“The Accuracy of Credit Report Information and the Fair Credit Reporting Act,” Senate Banking Committee, July 10, 2003, link:

http://banking.senate.gov/03_07hrg/071003/index.htm;

“The Role of FCRA in the Credit Granting Process,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003, link:

<http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>;

“Database Security: Finding Out When Your Information Has Been Compromised,” Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003, link:

http://judiciary.senate.gov/testimony.cfm?id=983&wit_id=2790;

“Fighting Fraud: Improving Information Security,” House Financial Services

1 Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003, link:
2 <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=202;>

3 “Information Flows: The Costs and Benefits to Consumers and Businesses of The
4 Collection and Use of Consumer Information,” Federal Trade Commission, National Workshop,
5 June 18, 2003.

6 10. I have written the following books:

7 Credit Scores and Credit Reports: How The System Really Works, What You Can Do
8 [3rd Edition] (Privacy Times, 2007);

9 Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd
10 Edition, Southern Illinois University Press, 1990), (Includes a chapter on credit reporting);

11 Former Secrets: Government Records Made Public Through The Freedom of Information
12 Act (Campaign For Political Rights, 1982).

13 11. I have presented the following international lectures:

14 24th International Conference of Data Protection & Privacy Commissioners (Cardiff,
15 Wales – Presentation published in conference proceedings, 2002);

16 The 23rd International Conference of Data Protection Commissioners (Paris, La Sorbonne
17 – Presentation published in conference proceedings, 2001); The 22nd Annual Conference on
18 Data Protection (Venice, Italy -- 2000);

19 The 16th Annual Conference on Data Protection (The Hague, The Netherlands -- 1994).

20 12. In the 1980s, served as an expert consultant to both the Privacy Commissioner of Canada and
21 Privacy Commissioner of Australia.

22 13. I have made the following presentations/instruction At Recent CLE & Professional Seminars:

23 “11th Annual Consumer Financial Services Litigation,” Practicing Law Institute, March
24 20-21, 2006 (New York City);

25 “Bankruptcy Roundtable,” and, “Fair Credit Reporting Act Roundtable,” National
26 Consumer Law Center, October 27, 2005;

“Advanced Consumer Litigation,” Texas Bar CLE, Feb. 10-11, 2005;

1 “Financial Privacy Litigation,” (Impact of FACT Act), Practicing Law Institute, February
2 28- March 1, 2005 (New York City);

3 “The New FACT Act: Challenge & Opportunity,” Privacy & American Business, Feb.
4 9-10, 2004;

5 “Understanding the FACT Act And The Impact of Multi-Agency Rulewriting Process,”
6 Glasser LegalWorks, Sept. 28-29, 2004;

7 “12th Annual National Conference,” National Credit Reporting Association, Nov. 10-12,
8 2004.

9 14. I am a member of the following professional societies: Past President and Board Member,
10 American Society of Access Professionals (www.accesspro.org).

11 15. I hold the following industry certification: FCRA Certification, National Credit Reporting
12 Association (www.ncrainc.org).

13 16. In addition to being a paid consultant and special guest on CNN’s IMPACT news in 1996, I
14 am quoted regularly by major and small newspapers (including The Washington Post, New York
15 Times, Wall Street Journal, Chicago Tribune, Los Angeles Times, Newsweek and Money
16 Magazine), regarding issues of privacy generally and the privacy implications of consumer
17 reporting specifically. I have appeared on National Public Radio, PBS NewsHour with Jim
18 Lehrer, ABC Nightline and World News Tonight, NBC Nightly News, CBS Evening News, CNN
19 News Watch, CNBC, MSNBC, Fox News, various local affiliates, and the Oprah Winfrey Show
20 and Geraldo, regarding these issues as well.

21 17. I have a Bachelor of Arts, Columbia College, Columbia University, New York, N.Y. (1979).

22 18. Within recent years, I have testified at trial, or been deposed as an expert, in the following
23 cases:

24 Andrews v. Trans Union Corp. et al., Case No. 96-7369, (USDC-C.D. Calif.), concerning
25 theft-of-identity and consumer report inaccuracies. Expert report, deposition, trial testimony.

26 Judge Lourdes Baird qualified me to testify about CRA procedures and their impact on the
consumer, and the nature of identity theft. The U.S. Court of Appeals for the Ninth Circuit ruled

1 that Judge Baird overly limited the scope of my testimony, specifically finding that my opinion
 2 on the prevalence of identity theft was relevant to the reasonableness of CRA procedures.
 3 (see 225 F.3d 1063 (2000)).

4 Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the
 5 Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports.
 6 Deposition. Trial Testimony Judge Leonie M. Brinkema presiding.

7 Matthew Kirkpatrick. v. Equifax Credit Information Services, et al.: U.S. District Court
 8 for the District of Oregon; No. CV 02-1197-MO. FCRA, identity theft. Expert report. Deposition.
 9 Trial Testimony. Judge Michael W. Mosman presiding.

10 Eddie Silva, et al. v. Haynes Furniture Co., Inc.: U.S. District Court for the Eastern
 11 District of Virginia: No. 4:04CV82. FCRA. Trial Testimony. Judge Walter D. Kelley, Jr.
 12 presiding.

13 Joi Helmes v. Wachovia Bank N.A.: U.S. Bankruptcy Court for the Eastern District of
 14 Virginia (Alexandria), Case No: 01-81277-RGM, Chapter 7. Post-bankruptcy credit reporting.
 15 Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

16 Denis W. Stasulis v. Suntrust: U.S. Bankruptcy Court for the Eastern District of Virginia
 17 (Alexandria), Case No: 04-12542-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert
 18 report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

19 Dwaine Perry, et al. v. FleetBoston Financial Corp.: U.S. District Court for the Eastern
 20 District of Pennsylvania: No. 04-507. FCRA. Expert Report. Trial Testimony. Judge Berle M.
 21 Schiller presiding.

22 Tammy Cochran v. C&M Motors, LLC, dba I-10 Toyota, et al: U.S. District Court for the
 23 Central District of California, No. CV-03-3568FMC. FCRA. Expert Report. Trial Testimony
 24 Judge Florence-Marie Cooper presiding.

25 Myra Coleman v. Trans Union LLC, CA4: 98-CV-169B-B (USDC-Mississippi) FCRA.
 26 Expert report, deposition, trial testimony. Judge Neal B. Biggers presiding.

Arthur Spengler v. Sears Roebuck & Co., Case No. C-03-0557. (Circuit Court, Wicomico

County, Maryland). Tort, Interference with Business Relationships. Trial Testimony. Judge D. Davis qualified me as expert on credit scoring, credit reporting and FCRA-related issues.

Judy C. Thomas v. Trans Union LLC, U.S. District Court for the District of Oregon; Case No. 00-1150-JE. FCRA. Expert report, deposition, trial testimony. Magistrate Judge John Jelderks presiding.

Scott E. Campbell v. G.E. Capital Auto Lease, Circuit Court For St. Mary's County, Maryland, Case No. 99-522. FCRA, invasion of privacy. Expert report, deposition. Judge Karen Abrams qualified me to testify, but the case settled one week before trial.

Franklin F. Grizzard, Jr. v. Trans Union, L.L.C., & Equifax Information Services L.L.C., et al.: U.S. District Court for the District of Virginia (Richmond Div.); Nos. 04-CV-625 & 04-CV-626, respectively. Expert report. Affidavit. Deposition. On the eve of trial, Judge Richard Williams rejected Defendant's motion to disqualify me. The case settled shortly thereafter.

Catherine Smith, et al. v. Progressive Corporation, et al.: U.S. District Court for the Middle District of Florida (Gainesville), Case No. 1:00-CV-210-MMP. Expert Report, Declaration of Value, Fairness Hearing testimony. Judge Maurice M. Paul presiding.

Franklin E. Clark, et al. v. Experian, et al.: U.S. District Court for the District of South Carolina, Case Nos. 8:00-1217-22, 8:00-1218-22, 8:00-1219-22. Affidavit, Supplemental Affidavit (both affidavits were admitted into evidence without objection). Judge Cameron McGowan Currie presiding.

In Re: Farmers Insurance Co., Inc., FCRA Litigation, U.S. District Court for the Western District of Oklahoma, Case No. CIV 03 158-F. FCRA. Expert report, deposition.

Steven E. Beck v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Virginia: No. 1-05cv347. FCRA. Expert report, deposition.

Larry Alabran v. Capital One Services, Inc.,: U.S. District Court for the Eastern District of Virginia (Richmond Division); Case No. 3:04-CV-935. Expert report, deposition.

Gail Cope v. MBNA American Bank NA: U.S. District Court for the District of Oregon; No. 04-CV-493-JE. Expert report, deposition.

Robert Gordon Peoples v. Experian Services Corp., et al.: U.S. District Court for the Central District of California: No. CV-04-1378 CAS (Ex). Expert report. Deposition.

Lottie Robertson v. Experian Information Services, Inc. & Capital One Bank: U.S. District Court for the Eastern District of Michigan (Southern Div.) No. 04-72308. Expert report. Deposition.

Barbara A. Harris v. Experian Information Solutions, Inc., and Equifax Credit Information Services, Inc: U.S. District Court for the District of Oregon, Civil No. 01-1728-JE. FCRA. Expert reports. Deposition.

Bruce Danielson v. Experian Information Solutions: U.S. District Court for the Northern District of Texas, Case No: 3-04CV-1722N. FCRA. Expert report. Deposition.

Stacy Lawton Guin, et al. v. Brazos Higher Education Service Corporation, Inc.: USDC-Minnesota – No. CV 05-668 RHK/JSM. Negligence. Security Breach. Affidavit. Deposition.

Anthony Chin v. State Dept. Federal Credit Union: Circ. Ct. Prince George's County (Maryland); Civ. Act. No. CAL04-12778; Tort. Deposition.

James M. McKeown v. Sears Roebuck & Co., et al: U.S. District Court for the Western District of Wisconsin, Civil No. Case No. 03-CV-0528 C. Expert Report, deposition.

Paulette Field v. Trans Union LLC, et al., Case No. 01 C 6390 (USDC-N.D. Illinois - Eastern Div. FCRA. Expert report. Deposition.

Earle E. Ausherman, et al. v. Bank of America Corporation et al.: U.S. District Court for the District of Maryland, Civil Action No. MJG-01-438. FCRA. Expert report. Deposition.

Jesse Klco v. Elmhurst Dodge, U.S. District Court for the Northern District of Illinois (Eastern Division) Civil Action No. 01 C 0433. FCRA. Expert report, deposition.

David & Ruthie Keefner v. Webb Ford, Inc. & Deon L. Willis.: U.S. District Court for the Northern District of Illinois (Eastern Division), Civil Action No. 02C-4643. FCRA. Expert report. Deposition.

Anthony & Alethea Preston v. MGIC, U.S. District Court for the Middle District of

1 Florida (Ocala), Case No. 5:03-cv-111-Oc-10GRJ. FCRA. Expert report, deposition.

2 Bruce Butcher and Pam Butcher v. Chase Manhattan Bank, U.S.A., Inc., U.S. District
3 Court for the District of South Carolina, Case No. 8:03-3184-26. FCRA. Expert report,
4 deposition.

5 Angela P. Williams v. Equifax Information Services, LLC, et al., Circuit Court for the
6 Ninth Judicial Circuit, Orange County Florida. Credit Reporting. Expert disclosure and report.
7 Deposition. Trial Testimony. Judge George A. Sprinkel IV presiding.

8 Rebecca L. Valentine v. Equifax Credit Information Services, et al. : U.S. District Court
9 for the District of Oregon; No. CV 05 - 80 1-JO. FCRA, identity theft. Expert report. Deposition.
10 Trial Testimony. Judge Robert E. Jones presiding.

11 Nicole Robinson v. Equifax Information Services, LLC, et al., U.S. District Court for the
12 Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports.
13 Deposition. Trial Testimony Judge Walter H. Rice presiding.

14 19. Defendant credit reporting agencies each maintain a system of reinvestigating consumer
15 disputes described as a consumer dispute verification (CDV), typically an automated consumer
16 dispute verification (ACDV) system. The dispute verification system essentially uses a one page
17 form that reduces the consumer's dispute--no matter how lengthy or thorough or well
18 documented-- to a generic two digit code or alpha-numeric code and sometimes a one-line
19 paraphrase of the consumer's dispute. It then sends these forms, either by mail or fax in the case
20 of the CDV or electronically in the case of an ACDV to the entity that furnished the information.
21 This, in the very vast majority of cases, is the entire extent of the credit reporting agency's
22 "investigation" of the consumer's dispute.

23 20. In the vast majority of cases, the furnisher then can simply "verify" the information, or
24 instruct to modify or delete the information with minimal thought or consideration. There is
25 nothing in the CDV system that requires or assures that information about the consumer's dispute
26 is carefully reviewed or carefully considered by the furnisher, or that a true investigation is
performed, in responding to the dispute. I state this because Webster's New Collegiate

Dictionary defines “investigate” as, “v. To observe or study by close examination and systematic inquiry. Systematic—adj. Marked by thoroughness and regularity.” In contrast, the CDV system is essentially an exchange of messages between CRA and furnisher, and this message exchange is neither a “study by close examination” nor “marked by thoroughness and regularity. The ACDV system has no capability for the credit reporting agencies to send, or furnishers to receive, documents. When verifying an entry, no meaningful explanation of the nature of the investigation or explanation of the findings is required of the furnisher by any of the credit reporting agencies. It is my opinion that these factors, taken separately and together, do not comport with the requirements of Civil Code section 1785.16(a) and (b).

21. In sending out the CDVs, none of the credit reporting agencies necessarily involve the originating creditor, but typically only the entity that furnished the information. Oftentimes, this means debt collectors, who have little or no knowledge of debt’s history or accuracy. It is my opinion that this does not comport with the requirements of Civil Code section 1785.16(a) and (b).

22. Each of the defendant credit reporting agencies provide nothing more than a regurgitation of the statutory duties, and sometimes, identifying information of the furnisher, when a consumer requests a description of the procedure used to determine the accuracy and completeness of information disputed pursuant to California Civil Code section 1785.16(d)(4)/15 USC

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1 1681i(a)(6)(B).

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3 I declare under penalty of perjury under the laws of the State of California that the above
4 is true and correct.

5 Sworn at the City of _____ County of _____, State of
6 _____ this ____ day of July, 2008.

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10 BY _____
11 EVAN HENDRICKS
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